IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Writ Petition No. 16 of 2002 (S/B)

Ram Saran
S/o Late Bihari Lal
R/o Cheela Power House Cheela
Tehsil & District Pauri ..Petitioner

Versus

1. State of U.P.
through Irrigation Secretary, Lucknow

2. Executive Engineer,
Power House Nirman Khand, Irrigation
Rishikesh District Dehradun ..Respondents

Sri D.S. Patni learned counsel fro the petitioner.
Sri Paresh Tripathi, learned Standing Counsel for the respondents.

Hon'ble B.C. Kandpal, J.

By means of this Writ Petition, writ of mandamus has been sought restraining the respondents from interfering in the functioning of the petitioner as Chowkidar and also for quashing the order/notice dated 24.05.2001 retiring the petitioner at the age of 58 years.

Brief facts giving rise to this writ petition are that the petitioner Ram Saran was initially inducted in the service as Chowkidar (class IV category) w.e.f. 13.05.1974 on work charge basis in the establishment of Irrigation Deptt.

The date of birth of the petitioner as per the service record is 09.02.1944, as such he would have retired at the age of 60 years on 28.02.2004.

The writ petition further reveals that the petitioner is continuously working from the date of his initial induction in the Department though the nature of job was temporary.

According to the petitioner, the retirement age of the work charge employee is 60 years but he was served with

notice from the respondents for retiring him at the age of 58 years as he has been regularized on 05.11.1985. In the writ petition, it has been challenged that the petitioner cannot be treated an appointee after the cut off dated 05.11.1985 merely for the reason that he has been regularised thereafter.

The respondents no. 1 and 2 have contested the writ petition and filed their counter affidavit and it has been admitted in the counter affidavit that the petitioner was work charge employee from the date shown in the writ petition. There is no dispute about the date of birth of the petitioner. It has been stated in the counter affidavit that the petitioner was not posted as Chowkidar on substantive post as such notice issued to him is valid according to the law.

Heard learned counsel for the parties and perused the record.

U.P. Fundamental (First Amendment) Rules 1987 (applicable in Uttaranchal) have been notified on 20.07.1987 whereby the Rule 56 of the Financial Hand Book, Para 2 Volume II has been amended w.e.f. 05.11.1985 and according to the said amendment the employees of Class IV category will retire at the age of 58 years except those who have been appointed prior to 05.11.1985, for whom, the retirement age has been fixed to be 60 years.

In the supplementary affidavit, the petitioner has averred that as per the Office Memorandum dated 14th November, 1996 issued by the Irrigation Department, Government of U.P. (applicable in Uttaranchal) the work charge employees having pay scale of Rs. 750-940 will retire at the age of 60 years, if they have been appointed prior to 05.11.1985 and others at the age of 58 years.

Now in view of the aforesaid, the sole question arises for consideration before me whether the word “recruitment” mentioned in the aforesaid Notification, whereby Fundamental

Rule 56 was amended, refers only to the regularization of the petitioner or it includes appointment as work charge also.

Learned counsel for the petitioner has submitted that the word “recruitment” does not refer to the regularisation while, the learned counsel for the respondents argues that since before regularization, the petitioner was holding the post of work charge as such he cannot be said to have been recruited as Government Servant prior to his regularization.

Looking into the aspect of this case, it is clear that the petitioner was appointed as Chowkidar w.e.f. 13.05.1974 on work charge basis. The documents filed before the court suggests that the petitioner was not like causal labourer having any fixed wage for it. Rather he was on a particular scale of pay, though known to be work charge employee as his service was liable to be terminated if the work or the project comes to an end. As such, in my considered view, the petitioner cannot be treated to have been recruited from the date of regularization for the purpose of Fundamental Rule 56 of the Financial Hand Book, Part 2 Volume II.

I am also of the view that the word “recruitment” does not mean regularization particularly for the purpose of workmen who had their own pay scale and the retirement age. The petitioner shall be treated to be appointed prior to 05.11.1985 for the purpose of Fundamental Rule 56 as amended vide U.P. Fundamental (First Amendment) Rules, 1987.

Therefore, for the reasons discussed above, the notice of retirement issued against the petitioner for retiring at the age of 58 years, is liable to be quashed.

Accordingly, the writ petition is allowed.

Notice dated 24.05.2001 issued to the petitioner for retiring him at the age of 58 years is hereby quashed. The petitioner shall be treated to have retired at the age of 60 years.

The respondents shall pay the entire amount of arrears of salary and post-retrial benefits to the petitioner treating him to be in service between the age of 58 years to 60 years.

(B.C. Kandpal, J.)

8th June, 2005
Shiv